App. F. IX-4

PRESERVED

1935

(Law)

File No. 235-35

Serial Nos. 1-2

Previous References

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for August 1936

SUBJECT.

Legal opinion re the admissibility of Pay & Allowance due to a deceased Rev. Inspector in execution of decree passed by the Regr of C.S

WD 01965—GPB—15,000—7-7-34

7903

General & Revenue Secretariat. | Law File No. 25 of 1935. | [App. F. III–2

Serial No.

From,

Re D.C. Kadur 2

no. Mis. C. 4301/35-36 d 25-6-36

Soliciting instructions whether re Horse allowance of Rs 40/- due to re late Mr. S. Srinivasa Rao, R.S. Siddlaghatta taluk may be attached in execution of a Coop^ve Society decree.

Under sec 60 (d) (i) of the C.P.C. allowances of a public officer is not attachable.

Submitted for orders

ISO 7/7.

This reference for opinion ought to come through the Head of the Deptt - Vide rule 63 of the Legal affairs Rules

: it however clear that a horse allowance is not liable for attachment under sec 60 (i) of the C.P. Code -

Yes sir) MP 2/7

Is not from attachment, Do you mean? Sec 60 Proviso Clause i mentions what shd not be attached Horse all^ce is not included in it. So it wd be liable to attachment?

Yes 4/7

Sec 60 Cl (i) makes salaries to the extent therein mentioned and all allowances

NOTE—Contn. Sheet.

RECEIVED 3 JULY 1936 64

File No. of 193 3

General and Revenue Secretariat

equal to ~~the~~ salary exempt from attachment.
As explained in note 1 to art 56 B of the
M.C.A.C Vol I, allowances granted to meet
specific expenditure are not included in
salary but they are nonetheless exempt
from attachment under cl (i) of sec 60.
(Govt Secy)
pse
6/7

Please speak all true for a minute Sahib
Tuné -
pse
9.7

I would ~~treat the horse~~ all^ce ~~under~~ as money which
given to the officer for specific purpose and
which he cannot use for himself - i.e money
over which he has no power of disposal
In my case the mcac is clear and the
horse all^ce is not liable to attachment.
Please consult Govt advocate also.
pse
17.7.36

G.O. No. P 1436 dated
17/7/1936.
Fin 64/36-37
dt 20.7.36.

Forwarded with compliments to the
Govt Advocate for favour of opinion
pse
17.7.36

Returned with compliments.
The question is not free from doubt.
Clause (h) of Section 60 does not apply to an
allowance of the sort now under consideration.

G.O. No. 23/36-37
dt 7.8.36

Clause "(n)

GENERAL SECRETARIAT
4 JULY 1936

GENERAL SECRETARIAT
8 AUG 1936

Serial No.

Clause (n) would apply only if the allowance is declar by any law passed by the Government to be exempt from liability. Rule 56 B. in the Account Code does not purport to be a rule framed under the rule-making powe conferred on the Government by any statute and it is assumed that it is only a departmental instruction. It may however be ascertained under what power that ru was framed. The only other clause relating to allowances is Clause (i). This clause exempts the salary or allowances equal to salary. The sub clauses while mentioning how much of the salary is exempt does not refer to allowances.

There is no case-law on the subject and the commentators are also silent on this point. I do not however see why the horse allowance which is specially given for a specific purpose should not be brought - within the scope of this clause.

One other question that arises for consideration is, now that the person entitled to the allowance is dead, it might be contended that arrears now due must be deemed to be a debt in the hands of his heirs and as such liable to be attached. But as laid down in I.L.R. 26 Madras 69, if allowances remain unpaid with the Government, the character of such allowances is not changed and therefore the exemption granted by Sec.60 would equally apply to the allowances though the Officer may be no more.

For the reasons stated above I think the allowance in question must be considered to be exempt from

WD 03594—GPB—30,000—13-7-35

File No. 235— of 193 5— General and Revenue Secretariat

rom attachment.

Government Advocate.

SN/6.8.36

Instns received accdly

Ltd 8/8

Draft prepd 8/8

bd a dft for approval

8/8/36

Issued as revised prepd 11/8

To

the D.C. Kolar

letter No. L 1179; Dt. 14-8-36

tates that the horse allowance is exempt

RECEIVED 11 AUG. 1936 GENL & REV. SECTT.

7903 of 35
P

OFFICE OF THE DEPUTY COMMISSIONER,
KOLAR DISTRICT.

In all future correspondence please quote this
No. M.3.C.4301/35-36.
Encls.

Dated Kolar, the 25th June *1936.*

Law 225-35-1

FROM J.Appaji Gowda Esq., B.A.,(Hons).,
~~I.C.S.~~,
Deputy Commissioner,
Kolar District.

To
M.Venkatesa Iyengar Esq., M.A.,
SECRETARY TO GOVERNMENT OF MYSORE,
General *Department,*
Bangalore.

GENERAL 27 JUNE 1936

SIR,

In forwarding herewith a copy of letter No.851 dated May 1936 from the Government Advocate in Mysore, Bangalore have the honour to state that a decree date[illegible]-12-34 had passed by the Registrar of Co-operative Societies against G.Srinivasa Rao who was a Revenue Inspector and who is now deceased and the same was sent for execution on 18-2-36 to Amildar, Sidlaghatta Taluk.

While G.Srinivasa Rao was working as Revenue Inspect Sidlaghatta Taluk his horse allowance amounting to Rs.40/- been with-held, but the same has recently been ordered to paid to him. A bill sanctioned for Rs.40/-, was sent to th Amildar, Sidlaghatta Taluk on 19-2-36 for encashment and p to the widow of the deceased Revenue Inspector.

The Amildar of Sidlaghatta Taluk seeks orders as to whether this sum of Rs.40/- may be attached towards the dec amount due by the deceased Revenue Inspector.

I solicit your instructions as to whether the attach of the amount towards the decree will be legal.

I have the honour to be,
S i r,
Your most obedient servant,

Deputy Commissioner,
Kolar District.

Letter No.851 dated 27th May 1936 from the Government Advocate in Mysore, Bangalore, to the Deputy Commissioner, Kolar District.

With reference to your letter No.M.3.P.R.308/35-36 dated the 15th May 1936, I have the honour to state that accord to the Rules in force at present, all matters for legal opinion have to be sent to the Secretary to Government, in charge of the Law Section of the Secretariat and not to this Office. I, there fore, request you to kindly address the General Secretary to Government for the opinion required by you.

'COPY'

Deputy Commissioner,
Kolar District.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Law 835-38-2 *Dated, Bangalore,* 16.8.1936

From

M. Venkatesa Iyengar, Esquire, M.A.,
General Secretary to the Government of His Highness the Maharaja of Mysore.

To

J. Appaji Gowda, Esquire, B.A.,
Deputy Commissioner, Kolar District.

Sir,

With reference to your letter No. M3 C 4301/35-36 dated the 25th June 1936 soliciting legal opinion regarding the attachability of an horse allowance due to a deceased Revenue Inspector in execution of a decree passed by the Registrar of Co-operative Societies, I am directed to state that the allowance in question has to be treated as exempt from attachment under Section 60 of the Civil Procedure Code read with Note 1 to Article 56 B of the Mysore Civil Account Code, Volume I.

I have the honor to be,
S i r ,
Your most obedient servant,

pp
for General Secretary to Government.

No-P 1179 Law 23 35-2

14.8.36

The Secretary

Sir

With reference to your letter No: MSC 4301/2836 dated 25 June 1936 soliciting legislation requiring the attachability of an horse allowance due to a deceased Rev Inspector in execution of a decree passed by the Registrar of Cooperative Societies I am directed to state that the allowance in question has to be treated as exempt from attachment under Sec 60 of the Civil Procedure code read with Note 1 to art 56 (3) of the M.C.A. Vol I

I have etc

MP

Foreign

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

Date of issue .....

Signed by .....

List of enclosures.....

Copied by .....

Examined by.....

Section Law

File No. 235 - 35

Serial No. 2 PTO

No.

To

The D.C. Kolar

Subj ... of the horse

allowance of Mr. G. Sreenivasa Rao

Rev: Inspr: towards the decree amou

Sir, I have the

... With reference to your letter

No. M.3.C. 4301/35-36, D. 20th June '3

soliciting instructions

subject, I am directed to st

that ~~the attachment of~~ the horse

must be considered exempt from atta

allowance of Rs 40/-, ~~towards the~~

decree amount pnd by the

deceased Rev: Inspr ~~with bad~~

illegal as the ... in

question is considered to be

~~from attachment~~ in the ligh

of the legal opinion furnished herewith

I have etc!

For Genl Secy

WD 03601—GPB—30,000—23-9-35

JB